

**COOK COUNTY  
COMMISSION ON HUMAN RIGHTS  
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**INTERPRETATIVE AND PROCEDURAL RULES**

**GOVERNING THE COOK COUNTY  
EARNED SICK LEAVE ORDINANCE**

**APPROVED MAY 25, 2017**

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**PART 100    GENERAL PROVISIONS**

**SUBPART 110    DEFINITIONS**

**Section 110.100    Defined Terms**

All defined terms used in these regulations have the same meaning as the defined terms set out in Section 42-2 of the Cook County Earned Sick Leave Ordinance (“Ordinance”). In addition, the following terms shall have the following meanings when used in these Rules:

*Accrual Cap:* The maximum number of hours of Earned Sick Leave that a Covered Employer must allow a Covered Employee to accrue during any Accrual Period and as described in Section 400.500.

*Accrual Period:* The 12-month period in which a Covered Employee accrues Earned Sick Leave, and which is used for purposes of determining the maximum number of hours of Earned Sick Leave that may be accrued, used and carried over on an annual basis. The dates of each annual Accrual Period are based on the anniversary of an employee’s Date of Initial Accrual.

*Close Association:* A relationship between a Covered Employee and another individual which is deemed the equivalent of the specifically identified familial relationships that are listed in Section 42-2 of the Ordinance for the defined term “Family member” (e.g., a parent-child, grandchild-grandparent, sibling, spousal). In determining whether a relationship is a Close Association, the Commission may consider whether, for some significant period of time, the Covered Employee provided uncompensated personal care for the individual and/or the individual provided such care for the Covered Employee and/or the Covered Employee and the individual lived together and shared financial and household responsibilities or one provided financial support for the other. The Commission may also consider whether the Covered Employee and the individual would be considered “Family member[s]” as that term is used in federal sick leave regulations (e.g., 5 C.F.R. § 630.201(b)) and/or any other appropriate consideration raised in any particular case. The Commission will not disregard a Close Association on the basis of terminology, if the terms used to describe a particular relationship vary from those used in Section 42-2 of the Ordinance for the defined term “Family member” due to identifiable cultural and/or linguistic differences.

*Commission:* The Cook County Commission on Human Rights.

*Commissioners:* The appointed members of the Commission pursuant to Section 42-34 of the Cook County Code of Ordinances.

*Commission Staff:* Those individuals who shall perform investigative, clerical, administrative or other duties as described and delegated by the Commissioners on behalf of the Commission through the Director.

*Construction Industry:* As defined in Section 42-2 of the Ordinance to mean any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure,

highway, roadway, excavation or other structure, project, development, real property or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project, development, real property or improvement herein described of any material or article of merchandise. Per Section 42-2 of the Ordinance, the Construction Industry also includes moving construction related material on the job site to or from the job site, snow plowing, snow removal and refuse collection.

*Covered Employee:* As defined in Section 42-2 of the Ordinance and Section 310.100.

*Covered Employer:* As “employer” is defined in Section 42-2 of the Ordinance and Section 320.100.

*Date of Coverage:* The first date on which an employee meets the criteria to be a Covered Employee. As fully described in Section 310.100, this primarily requires working at least two hours in a two-week period for a Covered Employer while physically present in Cook County.

*Date of Eligibility:* The first date upon which an employee has worked 80 hours within any 120-day period for a Covered Employer.

*Date of First Allowable Use:* The first date on which a Covered Employee can use Earned Sick Leave, which is the later of (i) the Covered Employee’s Date of Eligibility or (ii) the expiration of the Covered Employer’s Use Waiting Period, if any.

*Date of Initial Accrual:* The first date upon which a Covered Employee starts accruing Earned Sick Leave, which is the later of (a) July 1, 2017, (b) the first calendar day after his or her Start of Employment, or (c) the Covered Employee’s Date of Coverage.

*Director:* The Director of the Cook County Commission on Human Rights.

*Eligible Employee:* An employee who has worked at least 80 hours regardless of location for a Covered Employer in any 120-day period.

*Family Member:* As defined in Section 42-2 of the Ordinance.

*FMLA-Eligible Covered Employee:* A Covered Employee who works for an FMLA-Eligible Covered Employer and is eligible for job-protected unpaid leave under the federal Family and Medical Leave Act.

*FMLA-Eligible Covered Employer:* A Covered Employer who is subject to the requirements of the federal Family and Medical Leave Act.

*FMLA-Restricted Earned Sick Leave:* Paid leave awarded by a Covered Employer to a Covered Employee that the Covered Employee can use for any purpose set out in the federal Family and Medical Leave Act and still be compensated by the Covered Employer at the same rate and with the same benefits earned as if the Covered Employee had worked for the Covered Employer instead.

*Non-FMLA-Eligible Covered Employee:* A Covered Employee who either works for a Non-FMLA-Eligible Covered Employer or works for an FMLA-Eligible Covered Employer but is not him or herself eligible for job-protected unpaid leave under the federal Family and Medical Leave Act for whatever reason, including that such an employee has not worked for the Covered Employer for at least 12 months, has not worked at least 1,250 hours for the Covered Employer in the last 12 months or does not work in a location that is close enough to a location where the Covered Employer employs 50 or more employees.

*Non-FMLA-Eligible Covered Employer:* A Covered Employer who is not covered by the federal Family and Medical Leave Act, for whatever reason, including but not limited to because the Covered Employer employs fewer than 50 employees or employs 50 or more employees but for less than 20 workweeks in the current or preceding calendar year.

*Ordinance:* The Cook County Earned Sick Leave Ordinance as enacted by the Cook County Board of Commissioners on October 5, 2016, compiled into the Cook County Code of Ordinances at Chapter 42, Article I, Division 1, and as amended from time to time thereafter.

*Ordinance-Restricted Earned Sick Leave:* Paid leave awarded by a Covered Employer to a Covered Employee that the Covered Employee can use for any purpose set out in Section 42-3(c)(2) and still be compensated by the Covered Employer at the same rate and with the same benefits earned as if the Covered Employee had worked for the Covered Employer instead.

*Overtime Eligible:* An employee who is eligible for additional compensation for overtime hours worked under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.*, or other applicable law.

*Overtime Exempt:* An employee who is exempt from compensation for overtime hours worked under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.*, or other applicable law.

*Start of Employment:* The date on which an employee commences working for a Covered Employer. As explained in Section 310.400, any rehire by the same Covered Employer within 120 days of an employee's prior separation from employment relates back to the original Start of Employment.

*Temporary Staffing Firm:* An employer that hires its own employees and assigns those employees to perform work or services for another entity or organization at that entity's or organization's place of business.

*Use Waiting Period:* A time period that may be established by a Covered Employer as the minimum duration of time that an employee must work for the Covered Employer before he or she can use any accrued Earned Sick Leave; provided that in no event may a Use Waiting Period be more than 180 calendar days after an employee's Start of Employment.



**SUBPART 120      RULES OF CONSTRUCTION**

**Section 120.100      Construction of Rules**

These Rules shall be liberally construed to accomplish the purposes of the Ordinance.

**Section 120.200      Effect of Rules**

These Rules shall constitute the policy and practice of the Commission and shall govern activities of the Commission.

**Section 120.300      Amendment of Rules**

Changes in these Rules may be made by a vote of a majority of the full membership of the Commissioners at a regular or special meeting of the Commissioners.

**Section 120.400      Availability of Rules**

The Rules of the Commission shall be available to the public, and copies may be obtained on the Commission's website: <https://www.cookcountyil.gov/agency/commission-human-rights-0>.

**Section 120.500      Petition for Rulemaking**

Any person may request that the Commission promulgate, amend or repeal a rule by submitting a written petition to the Chairperson. The petition, which shall be in writing, shall set forth in particular the rulemaking action desired and should contain the person's arguments or reasons in support thereof. The Commission shall be notified of any petition filed in accordance herewith. Any rulemaking undertaken in response to such petition shall be conducted in accordance with Section 120.300 herein.

**Section 120.600      Practice Where Rules Do Not Provide Clear Guidance**

If a matter arises in enforcing the Ordinance that is not specifically governed by these Rules, the Director shall, in the exercise of his or her discretion, specify the practice to be followed and as soon as practicable petition the Commission to adopt a clarifying rule pursuant to Section 120.500 herein.

**Section 120.700      Days**

Where the Ordinance or these Rules refer to passage of time as being measured in days, the Commission will treat days as calendar days, inclusive of weekends and holidays. The Commission will not assume that the passage of time is denominated in business days unless the Ordinance or these Rules state so explicitly.

**Section 120.800      Delegation of Authority by Commissioners**

Except as to those matters specifically enumerated below, the Commissioners may delegate to the Commission Staff, as the Commissioners consider necessary, any matter properly before the Commission. Such delegation to the Commission Staff, where permissible, shall be presumed,

subject to recall as to specific items at any time by a vote of the majority of Commissioners present at a meeting of the Commission. Any delegation of authority by the Commissioners to the Commission Staff shall be effectuated in accordance with both the Ordinance and these Rules adopted and approved by the Commissioners.

The following matters are reserved for consideration of and disposition by the Commissioners:

- (1) Rulemaking and similar proceedings involving the promulgation of Commission rules; and
- (2) Conducting Commission meetings.

**PART 200    BENEFIT**

**Section 200.100    Description**

Earned Sick Leave is a benefit provided by a Covered Employer to a Covered Employee, which consists of (1) allowing job-protected absences from work for a given number of hours, for the purposes set out in Section 42-3(c)(2) of the Ordinance or, where applicable, the federal Family and Medical Leave Act and (2) compensating the absent Covered Employee for these hours as if he or she were not absent from work.

(A)    Compensation and Benefits

Except as provided in subdivision (1) of this Section, when using Earned Sick Leave a Covered Employee shall be compensated at the same hourly rate that the Covered Employee would have earned at the time the Earned Sick Leave is taken.

- (1)    If the Covered Employee uses Earned Sick Leave during hours that would have been designated as overtime, the Covered Employer is not required to pay the overtime rate of pay.
- (2)    When using Earned Sick Leave, a Covered Employee is not entitled to compensation for lost tips or gratuities; provided, however, that a Covered Employer must pay a Covered Employee in an occupation in which Gratuities have customarily and usually constituted part of the remuneration at least the applicable minimum wage, inclusive of any additional compensation that a Covered Employer would be obligated by law to pay to the Covered Employee if he or she had worked the same number of hours for the Covered Employer but had received no gratuities.
- (3)    When a Covered Employee who is paid on a commission basis (whether base wage plus commission or commission only) uses Earned Sick Leave, the Covered Employer must pay the Covered Employee the hourly rate of pay based on the base wage or the applicable minimum wage, whichever is greater.
- (4)    For Covered Employees who are paid on a piecework basis (whether base wage plus piecework or piecework only), the Covered Employer shall calculate the Covered Employee's hourly rate of pay by adding together his or her total earnings from all sources for the most recent workweek in which no sick time was taken and dividing that sum by the number of hours spent performing the work during such workweek. For purposes of this subdivision, "workweek"

means a fixed and regularly recurring period of 168 hours, or seven consecutive 24-hour periods.

If a Covered Employer would compensate a Covered Employee for regular work with any additional benefits, including but not limited to the accrual of paid leave, seniority or health benefits, a Covered Employer will compensate a Covered Employee using Earned Sick Leave with such additional benefits in the same manner and to the same extent as if he or she had performed regular work instead.

(B) Without Adverse Employment Consequences

Earned Sick Leave includes the entitlement to take such leave free from adverse employment consequences that would not have occurred if the Covered Employee had not taken the leave. The Ordinance does not insulate a Covered Employee from adverse employment actions that are unrelated to the exercise of rights established or protected by the Ordinance, including poor work performance, unexcused absenteeism and other failures to meet a Covered Employer's reasonable expectations.

**Section 200.200**      **No Remuneration for Unused Earned Sick Leave**

A Covered Employer is not required to, but may, provide financial or other reimbursement for any unused accrued Earned Sick Leave upon a Covered Employee's termination, resignation, retirement or other separation from employment, unless an applicable collective bargaining agreement provides otherwise.

**Section 200.300**      **No Consideration of Immigration Status**

The Commission will enforce the Ordinance without regard to the immigration status of any individual, employee, employer or witness. Covered Employers must extend the benefit of this Ordinance to all Covered Employees without regard to immigration status of any Covered Employee.

**PART 300    COVERAGE**

**SUBPART 310    COVERED EMPLOYEES**

**Section 310.100    Defined**

An individual who meets the following criteria is a Covered Employee as that term is used in the Ordinance:

- (1) the individual performs compensated work;
- (2) for a Covered Employer as defined in Section 320.100;
- (3) for a minimum of two hours in any two-week period;
- (4) while physically present within the geographic boundaries of Cook County; and
- (5) is not exempt from coverage under the Ordinance or Section 310.100(D).

(A)    Compensation for Work

An individual must be legally or equitably entitled to compensation for his or her work by a Covered Employer in order for the Commission to consider the individual to be a Covered Employee. The Commission will not consider an uncompensated volunteer to be a Covered Employee.

(B)    Duration of Work

The Commission will consider an individual's work in any two-week period at any time after the commencement of an individual's employment for a Covered Employer for the purpose of determining whether the individual has worked a sufficient number of hours in Cook County to be a Covered Employee.

(C)    Location of Work

The Commission will consider any compensated work that an individual performs within the geographic boundaries of Cook County for the purpose of determining whether the individual has worked a sufficient number of hours in Cook County to be a Covered Employee with the following exception: The Commission will not consider work that an individual performs within the geographic boundaries of a municipality that has lawfully preempted the Ordinance.

The Commission will not consider the following to constitute compensated work while physically present within the geographic boundaries of Cook County:

- (1) uncompensated commuting or

- (2) traveling through Cook County without stopping for a work purpose. Examples of stopping for a work purpose include, but are not limited to, making deliveries or sales calls. Stopping for a work purpose would not include making only incidental stops such as to purchase gas or buy a snack.

The Commission will also consider the following to constitute compensated work while physically present within the geographic boundaries of Cook County:

- (1) compensated commuting and
- (2) traveling into Cook County for a work purpose, including but not limited to, deliveries, sales calls and travel related to other business activity for a Covered Employer which is taking place within Cook County.

For the purpose of determining whether an individual is a Covered Employee, the Commission will consider time that an individual spends performing compensated work for a Covered Employer at the individual's residence or any other location that is physically present in Cook County that is not the Covered Employer's place of business if the Covered Employer explicitly requires that the individual work at that location.

(D) Exempt Employees

Notwithstanding the foregoing, the Commission will not consider an individual to be a Covered Employee under the following conditions:

- (1) the individual is an employee working in the Construction Industry who is covered by a *bona fide* collective bargaining agreement;
- (2) the individual is an employee covered by a *bona fide* collective bargaining agreement that was entered into prior to July 1, 2017 and remains in effect after July 1, 2017;
- (3) the individual is an employee who has waived his or her rights under the Ordinance pursuant to a *bona fide* collective bargaining agreement entered into after July 1, 2017 under the conditions described in Section 330.100;
- (4) the individual is an "employee" as that term is defined by Section 1(d) of the Railroad Unemployment Insurance Act, 45 U.S.C. § 351(d);
- (5) federal or state law preempts the individual from being covered by the Ordinance; or

- (6) the individual is an independent contractor; however, merely labeling an employee as an “independent contractor” will not defeat an employee’s rights under the Ordinance.

**Section 310.200      Types of Employees Who Can Be Covered Employees**

The Commission will consider an individual who meets the criteria set out in Section 310.100 to be a Covered Employee without regard to whether that individual is a full-time, part-time, temporary, seasonal, occasional, long-term, new or re-hired employee. Some of these types of employees, however, may be subject to special rules regarding accrual and use of Earned Sick Leave; for example, see Section 310.400 regarding employees who separate from service and return to work for the same employer within 120 days.

**Section 310.300      Impact of Timing and Location of Work by a Covered Employee**

(A)      Accrual: Only for Work Performed in Cook County

Beginning on the Date of Initial Accrual, a Covered Employee starts accruing Earned Sick Leave based on work for a Covered Employer that is performed within the geographic boundaries of Cook County. This Date of Initial Accrual may pre-date the Date of Eligibility.

The Commission will not require that a Covered Employer award Earned Sick Leave to a Covered Employee for, or on the basis of, work performed outside of Cook County or within the geographic boundaries of a municipality that has lawfully preempted the Ordinance.

(B)      Eligibility: Based on Work for Covered Employer in Any Location

A Covered Employee becomes eligible to use Earned Sick Leave when he or she has worked for the Covered Employer for at least 80 hours in any 120-day period. This requirement for eligibility may be satisfied by work that is performed in any location (*i.e.* within or outside of Cook County) and during any 120-day period after the employee’s Start of Employment.

An employee may become an Eligible Employee before or after becoming a Covered Employee. An Eligible Employee cannot accrue or use his or her accrued Earned Sick Leave until he or she is also a Covered Employee. An Eligible Employee’s ability to use his or her accrued Earned Sick Leave may also be delayed beyond his or her Date of Eligibility if the Covered Employer has established a longer Use Waiting Period that has not yet expired.

(C)      Use: Can Use Earned Sick Leave Wherever They Work

As of the Date of First Allowable Use, a Covered Employee is entitled to use his or her accrued Earned Sick Leave in any location (*i.e.* within or outside of Cook County) where the Covered Employee works for the Covered Employer.

**Section 310.400      Separation from Service**

The Commission will consider a Covered Employee who is rehired by the same Covered Employer after more than 120 days have passed since the Covered Employee’s separation from service to have commenced new employment for the purpose of these Rules. Accordingly, such an employee will have to reestablish his or her coverage pursuant to Section 310.100 and eligibility to use Earned Sick Leave pursuant to Section 310.300(B).

The Commission will consider a Covered Employee who is rehired by the same Covered Employer within 120 days since his or her separation from service to have continued his or her employment with that employer for purposes of coverage pursuant to Section 310.100, eligibility to use Earned Sick Leave pursuant to Section 310.300(B)-(C) and the number of days passed in any applicable Use Waiting Period.

If the Covered Employee is separated from service with unused accrued Earned Sick Leave, however, the Commission will not consider it to be a violation of the Ordinance if the Covered Employer fails to restore this leave when the Covered Employee is rehired unless it appears that the Covered Employer separated the Covered Employee from service in order to prevent the Covered Employee from using accrued Earned Sick Leave.

Unused accrued Earned Sick Leave has no cash value at a Covered Employee’s separation from service.

**SUBPART 320      COVERED EMPLOYERS**

**Section 320.100      Defined**

An employer who meets the following criteria is an Employer as that term is used in the Ordinance and a “Covered Employer” as that term is used in these Rules:

- (1) the employer gainfully employs at least one Covered Employee as defined in Section 310.100;
- (2) has at least one place of business within Cook County; and
- (3) is not exempt from coverage under the Ordinance or Section 320.100(C).

(A) Place of Business

The Commission will consider any fixed location where the business of the employer is transacted to be a “place of business” for the purpose of determining whether an employer is a Covered Employer. Examples of places of business include, but are not limited to, stores, restaurants, offices, factories and storage facilities. A residence that is a home business may be a place of business. A residence where a person employs a Covered Employee as a domestic worker whose work is performed in or about the residence or any other location also constitutes a place of business for the purpose of determining the location of the Covered Employer’s place of business. An employer with a single place of business within the geographic boundaries of Cook



County, subject to the limitations set out in Section 320.100(B), meets this qualification for being a Covered Employer, even if the employer's corporate headquarters, primary place of business, or the majority of its business, sales, facilities, or employees are located elsewhere.

The Commission will not consider a location within Cook County from which an employee telecommutes to be an employer's place of business unless the employer explicitly requires that the employee work at that location.

(B) Location of Place of Business

The Commission will consider any place of business within the geographic boundaries of Cook County for the purpose of determining whether the employer is a Covered Employer.

(C) Exempt Employers

Notwithstanding the foregoing, the Commission will not consider an employer to be a Covered Employer if:

- (1) federal or state law preempts the employer from being covered by the Ordinance;
- (2) the employer exclusively employs employees who are exempt from the Ordinance pursuant to Section 310.100(D);
- (3) the employer is a government employer, including:
  - a. The government of the United States or a corporation wholly owned by the government of the United States;
  - b. An Indian tribe or a corporation wholly owned by an Indian tribe;
  - c. The government of the State of Illinois or any agency or department thereof; and
  - d. Units of local government.

The Commission will define units of local government as that term is used in Article VII, Section 1 of the Illinois Constitution to include counties, municipalities, townships, special districts and units designated as units of local government by law that exercise limited governmental powers or powers in respect to limited governmental subjects. However, the Commission also includes school districts within its definition of exempt government employers.

**Section 320.200      Temporary Staffing Firms**

When a Temporary Staffing Firm places one of its employees in a temporary position at another entity or organization, the Commission will continue to consider the Temporary Staffing Firm to be that employee's employer for the purpose of determining whether the temporary staffing firm is a Covered Employer.

**Section 320.300      Joint Employers**

Where two or more employers have some control over the work or working conditions of an employee, the Commission may treat the employers as "joint employers" of the employee for purposes of the Ordinance. To be considered joint employers, each employer must independently satisfy the definition of a Covered Employer pursuant to Section 320.100, including that each employer must have its own place of business that is located within Cook County.

For example, if an out-of-state employer with no place of business in Cook County assigns one of its full-time employees to work on a long-term project at another employer's place of business that is located in Cook County, the out-of-state employer does not become subject to the requirements of the Ordinance as a joint employer or otherwise.

All joint employers are responsible, individually and jointly, for compliance with all applicable provisions of the Ordinance. In discharging their obligations under this Ordinance, joint employers may allocate responsibility for such obligations among themselves. Notwithstanding any agreement among joint employers, all joint employers remain responsible for compliance with the Ordinance and for satisfaction of any penalties imposed for any violation thereof.

**Section 320.400      Successor Employers**

If a Covered Employer sells, transfers or otherwise assigns its business to another employer who meets the criteria for coverage described in Section 320.100 after the sale, transfer or assignment, then any Covered Employee who continues to work for the new employer will retain coverage, eligibility, accrual and use of Earned Sick Leave with respect to the successor employer.

**SUBPART 330      WAIVER**

**Section 330.100      Pursuant to Collective Bargaining**

The Commission will not enforce the Ordinance with respect to employment that is governed by a *bona fide* collective bargaining agreement that was entered into prior to July 1, 2017 and that remains in force on July 1, 2017. After July 1, 2017, the Commission will enforce the Ordinance with respect to Covered Employees and Covered Employers who are governed by any *bona fide* collective bargaining agreement that is entered into after July 1, 2017, unless that agreement provides in clear and unambiguous terms that the Covered Employees have waived their rights under the Ordinance.

The Commission will enforce the Ordinance, except in cases where the waiver of rights complies with this rule, whether a *bona fide* collective bargaining agreement executed after July 1, 2017 is the first collective bargaining agreement between the parties or a renewal or extension of a previously existing collective bargaining agreement.

**Section 330.200      Pursuant to Individual Bargaining**

The Commission will deem any waiver, written or otherwise, by a Covered Employee of any provision of the Ordinance outside of the circumstances described in Section 330.100 as contrary to public policy, void and without effect on the Commission's continued enforcement of the Ordinance.

## **PART 400    ACCRUAL**

### **Section 400.100    Date of Initial Accrual**

A Covered Employee begins to accrue Earned Sick Leave on the Date of Initial Accrual, which is the later of (a) July 1, 2017, (b) the first calendar day after his or her Start of Employment or (c) the Covered Employee's Date of Coverage.

A Covered Employee's exact Date of Initial Accrual is dependent on two factors: (1) whether the employee started working for a Covered Employer before or after July 1, 2017 (*i.e.* the effective date of the Ordinance) and (2) whether the employee works for the Covered Employer in or outside of Cook County.

To illustrate: for a Covered Employee who begins working for a Covered Employer before July 1, 2017 and who works for that Covered Employer in Cook County, the employee would start to accrue Earned Sick Leave on July 1, 2017. But for any employee who was already working for a Covered Employer on July 1, 2017, but was working for this employer outside of Cook County, such employee's Date of Initial Accrual would not be until his or her Date of Coverage (*i.e.* the date on which the employee works for the Covered Employer for two hours in Cook County as described in Section 310.100(C)).

For a person who is hired by a Covered Employer after July 1, 2017, and whose first day of work for the Covered Employer is in Cook County, his or her Date of Initial Accrual would be the first calendar day after his or her Start of Employment. For example, if a person starts working for a Covered Employer in Cook County on July 20, 2017, he or she will start to accrue Earned Sick Leave on July 21, 2017. But if that same person started working for a Covered Employer outside of Cook County on July 20, 2017, and first performs two hours of work for that Covered Employer in Cook County on September 5, 2017, then that employee will only begin to accrue Earned Sick Leave on September 5, 2017 (*i.e.* September 5, 2017 will be both that Covered Employee's Date of Initial Accrual and his or her Date of Coverage). *See* Section 500.200 for rules governing the earliest date when a Covered Employee can use accrued Earned Sick Leave.

Because there may be circumstances under which a Covered Employer may not reasonably know that an employee is a Covered Employee until after he or she has begun to accrue Earned Sick Leave, the Commission will not consider it to be a violation of the Ordinance if the Covered Employer does not calculate the Covered Employee's Earned Sick Leave until the date on which the Covered Employee first expresses a desire to use accrued Earned Sick Leave.

### **Section 400.200    Rate of Accrual**

A Covered Employee accrues one full hour of Earned Sick Leave for every 40 hours that he or she works for the Covered Employer within the geographic boundaries of Cook County, subject to the following qualifications:

#### **(A)    Overtime-Exempt Employees**

The Commission will assume that a Covered Employee who is Overtime Exempt works 40 hours per week for the purpose of accruing Earned Sick Leave. However, if such a Covered Employee

actually works for a Covered Employer less than 40 hours per week, the Covered Employer can award Earned Sick Leave to the employee on the basis of his or her actual number of hours worked. If such an employee actually works more than 40 hours per week, the Commission will not require the Covered Employer to award more than one hour of Earned Sick Leave per week.

For example, if a Covered Employee is a part-time Overtime-Exempt employee who is scheduled to work 10 hours per week, he or she will accrue one full hour of Earned Sick Leave after four weeks of work. If a Covered Employee is a full-time Overtime-Exempt employee who works 60 hours in a given week, however, the Commission would not find an Ordinance violation if a Covered Employer awarded the employee only one full hour of Earned Sick Leave as if the employee had only worked 40 hours that week.

(B) Overtime-Eligible Employees

In contrast, an Overtime-Eligible Covered Employee accrues Earned Sick Leave based on actual hours worked.

For example, if a Covered Employee is a part-time Overtime-Eligible employee who is scheduled to work 10 hours per week, he or she will accrue one full hour of Earned Sick Leave after four weeks of work. If a Covered Employee is a full-time Overtime-Eligible employee who is scheduled to work 60 hours per week, he or she would accrue one full hour of Earned Sick Leave after his or her first 40 hours of work during the first week, another full hour of Earned Sick Leave after his or her next 40 hours of work during the second week, and another full hour of Earned Sick Leave by the end of the second week (at which point he or she will have worked 120 hours), for a total of three hours of Earned Sick Leave after two weeks of work.

(C) Location Worked

The Commission will not require that a Covered Employer award Earned Sick Leave to a Covered Employee for, or on the basis of, work performed outside of the geographic boundaries of Cook County or within the geographic boundaries of a municipality that has lawfully preempted the Ordinance.

(D) Hours Worked

To the extent that uncertainty arises about what constitutes hours worked for the purpose of determining accrued Earned Sick Leave, the Commission will consider the principles for making such determinations for purposes of the Fair Labor Standards Act, which are set forth in Part 785 of Title 29 of the Code of Federal Regulations, 29 C.F.R. § 785.1 *et seq.*, as may be amended from time to time, and any analogous Illinois law, to be instructive.

(E) Frequency of Accrual

Earned Sick Leave accrues continuously up to the Accrual Cap (described in Section 400.500) for a Covered Employee's Accrual Period (described in Section 400.300), but a Covered Employer is only required to award a Covered Employee Earned Sick Leave in hourly increments. The Commission will not require that any Covered Employer award Earned Sick Leave in fractional increments when a Covered Employee has worked less than 40 hours since

accruing his or her last full hour of Earned Sick Leave. However, a Covered Employer should track the hours of work required to earn the next full hour of Earned Sick Leave until the end of the Accrual Period. Nothing in this Section prohibits a Covered Employer from using a payroll system that tracks fractional accruals of Earned Sick Leave.

(F) Covered Employees of FMLA-Eligible Covered Employers

Even for Covered Employees who work for FMLA-Eligible Covered Employers, the Commission considers Earned Sick Leave to be Ordinance-Restricted Earned Sick Leave during the Accrual Period in which a Covered Employee accrues it, even though if it is carried over from one Accrual Period to the next, it may become FMLA-Restricted Earned Sick Leave in the next Accrual Period pursuant to Section 400.600(B).

(G) Equivalent Alternative: Front-Load Annual Accrual

For ease of administration, Covered Employers may choose to front-load Earned Sick Leave for its Covered Employees rather than use the accrual method described in this Section. The Commission will not consider this to be a violation of the Ordinance so long as at the start of the Covered Employer's Accrual Period or, alternatively, on an individual Covered Employee's Date of First Allowable Use, the Covered Employer awards the Covered Employee the maximum amount of Earned Sick Leave that the Covered Employee could accrue during that Accrual Period using the accrual method. *See also* Section 600.300(A) (describing this as one of the alternative practices that the Commission has determined to be compliant with the Ordinance).

To illustrate, a Covered Employer could front-load all 40 hours of Earned Sick Leave for full-time Covered Employees at the start of their Accrual Periods instead of awarding them one hour of Earned Sick Leave at a time for every 40 hours they worked. In fact, any Covered Employee who works at least 1,600 hours during the year would be awarded 40 hours of Earned Sick Leave up front under this methodology, but Covered Employees who were going to work fewer hours in a year could be front-loaded less Earned Sick Leave. For example, the Commission would consider a Covered Employer to have complied with the Ordinance if that Covered Employer awards a Covered Employee who will work 1,040 hours during the year 26 hours of Earned Sick Leave up front. Where a Covered Employer cannot accurately predict the number of hours that a part-time employee will work during an Accrual Period, the Covered Employer should use the accrual methodology instead or, if insisting on front-loading, should overestimate the amount of Earned Sick Leave due to a Covered Employee (*e.g.*, award all Covered Employees 40 hours of Earned Sick Leave). Such a Covered Employer can also use a combination of front-loading and accrual methodologies to true up employees who end up working more hours during the Accrual Period than the Covered Employer estimated at the start of the Accrual Period. *See also* Section 400.600(C) for rules on front-loading carryover and Section 600.300(C) for rules on front-loading both annual accrual and carryover.

**Section 400.300**      **Accrual Period**

Each Covered Employee will accrue Earned Sick Leave during a 12-month Accrual Period that commences for that Covered Employee on his or her Date of Initial Accrual, stops upon reaching the Accrual Cap (described in Section 400.500), and then repeats annually. Different Covered

Employees of the same Covered Employer are likely to have different Accrual Periods. *But see* Section 600.300(E) explaining that the Commission will not treat as a violation of the Ordinance a deviation from the Accrual Period described in Section 400.300 so long as the Accrual Period used by the Covered Employer for the Covered Employee does not make the Covered Employee worse off with respect to the accrual, carryover or use of Earned Sick Leave.

**Section 400.400**      **[Reserved]**

**Section 400.500**      **Maximum Accrual Per Accrual Period**

During any Accrual Period, a Covered Employee is only entitled under the Ordinance to accrue up to a maximum of 40 hours of Earned Sick Leave. A Covered Employer, however, may set a higher Accrual Cap or allow unlimited accrual of Earned Sick Leave for hours worked. If a Covered Employer has not established a different Accrual Cap, the Commission will assume that the Covered Employer intends to cap annual accrual at 40 hours of annual accrual of Earned Sick Leave.

For the sake of clarity, after a Covered Employee's first Accrual Period, he or she may have more hours of Earned Sick Leave available for use than the Accrual Cap as a result of carrying over unused Earned Sick Leave accrued during the prior Accrual Period as described in Section 400.600.

**Section 400.600**      **Carryover from One Accrual Period to the Next**

The limit on the amount of unused accrued Earned Sick Leave that may be carried over from the end of one Accrual Period to the start of the next Accrual Period, and how that amount is calculated, varies depending whether the Covered Employer is FMLA-Eligible or Non-FMLA-Eligible, as follows. In all scenarios, the amount of unused accrued Earned Sick Leave that is carried over must be in hourly increments, and may not be fractional.

(A)      **For Covered Employees of Non-FMLA-Eligible Covered Employers**

At the end of a Covered Employee's Accrual Period (described in Section 400.300), a Non-FMLA-Eligible Covered Employer must permit a Covered Employee to carry over half of his or her total unused accrued Earned Sick Leave to the next Accrual Period up to a maximum of 20 hours. If halving the number of hours of unused accrued Earned Sick Leave would result in a fraction, that fraction should be rounded to the next whole number.

For example, if a Covered Employee of a Non-FMLA-Eligible Covered Employer has 20 hours of unused accrued Earned Sick Leave at the end of her first Accrual Period, she can carry over only 10 of those hours into the second Accrual Period. If that Covered Employee has 9 hours of unused accrued Earned Sick Leave at the end of her second Accrual Period, she can carry over 5 of those hours into the third Accrual Period (*i.e.* half of 9 is 4.5; rounding to the nearest whole hour increment is 5). If that Covered Employee has 44 hours of unused accrued earned Sick Leave at the end of her fourth Accrual Period, she can carry over only 20 of those hours into the fifth Accrual Period (*i.e.* half of 44 is 22, but there is a 20 hour maximum).

(B) For Covered Employees of FMLA-Eligible Covered Employers

Calculating the required amount of carryover for Covered Employees of FMLA-Eligible Covered Employers requires two steps:

First, an FMLA-Eligible Covered Employer, like a non-FMLA-Eligible Covered Employer, must permit a Covered Employee to carry over half of his or her total unused accrued Earned Sick Leave to the next Accrual Period, up to a maximum of 20 hours and calculated as set forth in subsection (A) above. Unused Earned Sick Leave carried over in this manner is Ordinance-Restricted Earned Sick Leave, which means that a Covered Employer does not have to allow a Covered Employee to use it in the next Accrual Period for any purpose other than those set out in the Ordinance and described in Section 500.500(B).

Second, in addition to the carryover described in the preceding paragraph, if a Covered Employee has any additional unused accrued Earned Sick Leave that was not carried over as Ordinance-Restricted Earned Sick Leave, then an FMLA-Eligible Covered Employer must permit the Covered Employee to carry over any such remaining accrued unused Earned Sick Leave, without first dividing those hours in half, up to a limit of 40 hours. Unused Earned Sick Leave carried over in this manner is FMLA-Restricted Earned Sick Leave, which means that a Covered Employer does not have to allow a Covered Employee to use it in the next Accrual Period for any purpose other than those set out in the federal Family and Medical Leave Act and described in Section 500.500(C).

For example, if a Covered Employee of an FMLA-Eligible Covered Employer has 30 hours of unused accrued Earned Sick Leave at the end of her first Accrual Period, she can carry over 15 of those hours into the second Accrual Period as Ordinance-Restricted Earned Sick Leave. However, rather than losing the remaining 15 hours of unused accrued Earned Sick Leave, she could carry over an additional 15 hours of Earned Sick Leave into the next Accrual Period as FMLA-Restricted Earned Sick Leave. If that Covered Employee has 70 hours of unused accrued Earned Sick Leave at the end of her second Accrual Period, she can carry over 20 as Ordinance-Restricted Earned Sick Leave into the third Accrual Period (half of 70 is 35, but a Covered Employer is not required to allow a Covered Employee to carry over more than 20 hours of Ordinance-Restricted Earned Sick Leave from one Accrual Period to the next). The Covered Employee could also carry over 40 hours of unused Earned Sick Leave that was not carried over as Ordinance-Restricted Earned Sick Leave as FMLA-Restricted Earned Sick Leave (50 hours of unused Earned Sick Leave was not carried over as Ordinance-Restricted, but a Covered Employer is not required to allow a Covered Employee to carry over more than 40 hours as FMLA-Restricted Earned Sick Leave into the next Accrual Period).

At the end of each Accrual Period, an FMLA-Eligible Covered Employer should calculate the number of hours available for Ordinance-Restricted Earned Sick Leave carryover before calculating the carryover hours for FMLA-Restricted Earned Sick Leave. When calculating the two kinds of carryover at the end of the Accrual Period, the Covered Employer shall start with the total amount of each Covered Employee's unused accrued Earned Sick Leave, without regard to whether during the course of that Accrual Period, such hours were considered Ordinance-Restricted or FMLA-Restricted for purposes of tracking allowable usage.



If it is clear that a Covered Employee will not be eligible to take leave under the federal Family and Medical Leave Act at any time during the Accrual Period to which unused accrued Earned Sick Leave is being carried over (*e.g.*, if the Covered Employee works too few hours to be FMLA-Eligible), the Commission will not consider it to be a violation of the Ordinance if an FMLA-Eligible Covered Employer does not allow the Covered Employee to carry over any FMLA-Restricted Earned Sick Leave from the current Accrual Period to the next Accrual Period.

(C) Equivalent Alternative: Front-Load Annual Carryover Maximum

The Commission will not consider it a violation of the Ordinance if a Covered Employer, for ease of administration, does not do individualized calculations of allowable carryover of unused accrued Earned Sick Leave from one Accrual Period to the next, but instead awards each Covered Employee at the start of each Accrual Period the maximum amount that the Covered Employee could have carried over pursuant to these Rules. *See also* Section 600.300(B) (describing this as one of the alternative practices that the Commission has determined to be compliant with the Ordinance).

For example, a Non-FMLA Eligible Covered Employer that awards Covered Employees at the start of each Accrual Period at least 20 hours of Earned Sick Leave typically does not need to allow carryover of unused accrued earned Sick Leave to comply with the Ordinance. Similarly, an FMLA Eligible Covered Employer that awards Covered Employees at the start of each Accrual Period at least 20 hours of Ordinance-Restricted Earned Sick Leave and at least 40 hours of FMLA-Restricted Earned Sick Leave typically does not need to allow carryover of unused accrued Earned Sick Leave to comply with the Ordinance. *See also* Section 400.200(G) for rules on front-loading annual accrual and Section 600.300(C) for rules on front-loading both annual accrual and carryover.

**PART 500    USE**

**Section 500.100    Earned Sick Leave Available for Use**

A Covered Employee can only use Earned Sick Leave that he or she has accrued or carried over pursuant to these Rules or which a Covered Employer has otherwise awarded to a Covered Employee. A Covered Employee is not entitled to use Earned Sick Leave in anticipation of accruing it at a later date.

**Section 500.200    Earliest Use of Earned Sick Leave**

A Covered Employee can use any of his or her accrued Earned Sick Leave at any time after the later of: (a) the Date of Eligibility or (b) the expiration of any Use Waiting Period.

If a Covered Employer has not established a Use Waiting Period, the Commission will assume that the Covered Employer intends for Covered Employees to be able to use their accrued Earned Sick Leave beginning on each Covered Employee's Date of Eligibility. The Covered Employer may, however, establish a Use Waiting Period that would prohibit a Covered Employee from using his or her accrued Earned Sick Leave until as late as the 180th day after the Covered Employee's Start of Employment.

**Section 500.300    Maximum Use Per Accrual Period**

(A)    Maximum Use for Covered Employees of Non-FMLA-Eligible Covered Employers

A Covered Employee of a Non-FMLA-Eligible Covered Employer is entitled to use no more than 40 hours of Earned Sick Leave during any Accrual Period, without regard to whether the hours used were earned in the current Accrual Period or carried over from the prior Accrual Period, for any purpose allowed by the Ordinance.

A Non-FMLA-Eligible Covered Employer may – but is not required to – allow a Covered Employee to use more than 40 hours of Earned Sick Leave during an Accrual Period.

(B)    Maximum Use for Non-FMLA-Eligible Covered Employees of FMLA-Eligible Covered Employers

A Non-FMLA-Eligible Covered Employee of an FMLA-Eligible Covered Employer is entitled to use no more than 40 hours of Ordinance-Restricted Earned Sick Leave during any Accrual Period, without regard to whether the hours used were earned in the current Accrual Period or carried over from the prior Accrual Period, for any purpose allowed by the Ordinance.

An FMLA-Eligible Covered Employer may – but is not required to – allow a Non-FMLA-Eligible Covered Employee to use more than 40 hours of Ordinance-Restricted Earned Sick Leave during an Accrual Period.

(C) Maximum Use for FMLA-Eligible Covered Employees of FMLA-Eligible Covered Employers

An FMLA-Eligible Covered Employee of an FMLA-Eligible Covered Employer is entitled to use no more than 40 hours of Earned Sick Leave during any Accrual Period, without regard to whether the hours used were earned in the current Accrual Period or carried over from the prior Accrual Period. Further, these 40 hours used may consist of any combination of Ordinance-Restricted Earned Sick Leave and FMLA-Restricted Earned Sick Leave that the Covered Employee elects consist with these Rules.

Under Section 42-3(c)(1) of the Ordinance, there is one circumstance in which, an FMLA-Eligible Covered Employer is required to allow an FMLA-Eligible Covered Employee to use up to 60 hours of Earned Sick Leave in an Accrual Period. If the FMLA-Eligible Covered Employee carries over the maximum allowable 40 hours of FMLA-Restricted Earned Sick Leave from the previous Accrual Period and then uses all 40 of these hours during the current Accrual Period, the FMLA-Eligible Covered Employer must allow that employee to use up to an additional 20 hours of Ordinance-Restricted Earned Sick Leave during the current Accrual Period (*i.e.* for a total maximum use of 60 hours of Earned Sick Leave used during the Accrual Period).

An FMLA-Eligible Covered Employer may – but is not required to – allow an FMLA-Eligible Covered Employee to use more Earned Sick Leave during any Accrual Period.

**Section 500.400**      **Increments of Use**

The Commission encourages a Covered Employee to consult with his or her Covered Employer in determining the duration (*i.e.* number of days and/or hours) of Earned Sick Leave used at any one point in time; however, in the event of a disagreement as to the duration of leave, the Covered Employee's preference is determinative.

A Covered Employer, however, can establish the minimum increment in which Earned Sick Leave can be used, provided that the minimum increment is no greater than four hours, even if this minimum requirement requires a Covered Employee to use more Earned Sick Leave at a time than he or she would otherwise prefer.

For example, a Covered Employee who has 20 hours of accrued Earned Sick Leave is scheduled to work from 8:00 a.m. until 4:00 p.m., but he or she has a doctor's appointment to attend at 8:00 a.m. that day. Although the Covered Employee could arrive at work by 10:00 a.m., if the Employer has established a minimum use increment of four hours, then he or she could be required to use four hours of Earned Sick Leave to attend the appointment and not arrive at work until 12:00 p.m. Similarly, if a Covered Employee has only two hours of accrued Earned Sick Leave and the Covered Employer has established a minimum use increment of four hours, then the Covered Employee would not be able to use Earned Sick Leave to attend that appointment.

If a Covered Employer has not established a written policy stating minimum increment for its employees' use of Earned Sick Leave, the Commission will presume that Earned Sick Leave can only be used in one whole hour increments.

**Section 500.500**      **Permissible Uses**

(A)      Generally

A Covered Employee can use Earned Sick Leave for any of the following reasons:

- (1)      the Covered Employee is physically or mentally ill or injured;
- (2)      the Covered Employee is receiving medical care, treatment, diagnosis or preventative medical care or recuperating from the same;
- (3)      the Covered Employee is the victim of domestic violence as defined in Section 103 of the Illinois Domestic Violence Act of 1986;
- (4)      the Covered Employee is a victim of sexual violence of stalking as defined in Article 11, and Sections 12-7.3, 12-7.4 and 12-7.5 of the Illinois Criminal Code of 2012;
- (5)      the Covered Employee's place of business is closed by order of a federal, state or local government public official (including a school district official) due to what the public official characterizes as a public health emergency;
- (6)      the Covered Employee's Family Member is physically or mentally ill or injured;
- (7)      the Covered Employee's Family Member is receiving medical care, treatment, diagnosis or preventative medical care or recuperating from the same;
- (8)      the Covered Employee's Family Member is the victim of domestic violence as defined in Section 103 of the Illinois Domestic Violence Act of 1986;
- (9)      the Covered Employee's Family Member is a victim of sexual violence of stalking as defined in Article 11, and Sections 12-7.3, 12-7.4 and 12-7.5 of the Illinois Criminal Code of 2012; or
- (10)     the Covered Employee's child's school or place of care has been closed by order of a federal, state or local government public official (including a school district official) due to what the public official characterizes as a public health emergency and the Covered Employee needs to provide care for the child.

(B) Ordinance-Restricted Earned Sick Leave

Covered Employees of FMLA-Eligible Covered Employers can use Ordinance-Restricted Earned Sick Leave only for the purposes set out in Section 500.500(A).

(C) FMLA-Restricted Earned Sick Leave

FMLA-Eligible Covered Employees of FMLA-Eligible Covered Employers can use FMLA-Restricted Earned Sick Leave for any reason that such an employee can take leave pursuant to the federal Family and Medical Leave Act, including, but not limited to:

- (1) a serious health condition that makes the Covered Employee unable to perform the functions of his or her job;
- (2) to care for the Covered Employee's spouse, child, or parent who has a serious health condition;
- (3) the birth of the Covered Employee's son or daughter and to care for the Covered Employee's newborn child; or
- (4) the placement of a child with the Covered Employee for adoption or foster care and to care for the Covered Employee's newly placed child.

FMLA-Restricted Earned Sick Leave is used in conjunction with, and provides compensation for, leave that is protected by the federal Family and Medical Leave Act, which may otherwise be unpaid. A Covered Employee's use of Earned Sick Leave for FMLA purposes runs concurrently with his or her use of leave under the FMLA, and does not reduce or extend the number of hours and/or days of FMLA leave to which a Covered Employee may be entitled under the federal Act, nor does such use otherwise affect a Covered Employee's rights and duties under that Act.

(D) Covered Employee's Option

If leave would be permissible under either Section 500.500(B) or 500.500(C), the Covered Employee may determine whether he or she will use Ordinance-Restricted Earned Sick Leave or FMLA-Restricted Earned Sick Leave, provided that if a Covered Employee is taking leave pursuant to the federal Family and Medical Leave Act, he or she must satisfy all requirements for taking such leave under the federal Act.

(E) No Protection for Impermissible Use

The Commission will not protect a Covered Employee who uses, has used or intentionally attempts to use Earned Sick Leave for an impermissible purpose from discipline by his or her Covered Employer, up to and including termination of employment.

(F) Disciplinary Leave

A Covered Employer is not required to allow a Covered Employee to use Earned Sick Leave when the Covered Employee has been suspended or otherwise placed on leave for disciplinary reasons.

**Section 500.600**      **Notice of Use**

(A) Covered Employer Can Set Reasonable Notification Requirements

A Covered Employer may establish reasonable notice requirements for Covered Employees using Earned Sick Leave for both foreseeable and unforeseeable absences from work, as described in Sections 500.600(B) and 500.600(C) below.

(B) Foreseeable Absences

For the purpose of this Rule, a Foreseeable Absence includes any non-emergency, prescheduled appointment with a health care provider for the Covered Employee or the Covered Employee's Family Member and any non-emergency, prescheduled court date in a case related to domestic violence, sexual violence or stalking of a Covered Employee or the Covered Employee's Family Member. If asked to make a determination of whether an absence was foreseeable, the Commission will consider foreseeability from both the subjective perspective of the Covered Employee and the objective perspective of whether another reasonable person under the same circumstances would have foreseen the absence.

The Commission will consider a policy regarding required notification to use Earned Sick Leave for Foreseeable Absences to be unreasonable under the following conditions:

- (1) where such a policy is not in writing;
- (2) where such a policy has not been communicated to the Covered Employee in advance of the Covered Employee's failure to provide notice;
- (3) where such a policy would require the Covered Employee to give notice when he or she is unconscious or otherwise incapacitated;
- (4) where such a policy requires a Covered Employee to provide notice prior to seven days before the absence; or
- (5) where such policy limits the means by which a Covered Employee can provide the required notice in a manner that makes compliance so unreasonably difficult that Earned Sick Leave cannot, as a practical matter, be used (*e.g.*, requiring employees who work in the field to provide in-person notice at a distant business facility or requiring

employees with limited written English abilities to submit notice by writing a complex memo).

(C) Unforeseeable Absences

Unforeseeable Absences are those absences that are not Foreseeable Absences as described in Section 500.600(B).

The Commission will consider a policy regarding required notification to use Earned Sick Leave for Unforeseeable Absences to be unreasonable under the following conditions:

- (1) where such a policy is not in writing;
- (2) where such a policy has not been communicated to the Covered Employee in advance of the Covered Employee's failure to provide notice;
- (3) where such a policy would require the Covered Employee to give notice when he or she is unconscious or otherwise incapacitated;
- (4) where such a policy does not allow a person other than the Covered Employee to provide the required notice on behalf of the Covered Employee;
- (5) where such a policy requires a Covered Employee to provide notice prior to the day of the absence; or
- (6) where such a policy limits the means by which a Covered Employee can provide the required notice to exclude phone, email or text messaging.

Although a Covered Employer cannot limit the means of communication by which a Covered Employee provides any required notice of an Unforeseeable Absence to exclude phone, email or text messaging, the Commission will not consider it to be an unreasonable policy for a Covered Employer to require that a Covered Employee memorialize the notification he or she provided of an Unforeseeable Absence after returning from the absence by the Covered Employer's preferred means of communication to facilitate the Covered Employer's recordkeeping.

(D) In the Absence of a Written Policy

If a Covered Employer cannot produce a written policy with respect to the notification it requires of its Covered Employees using Earned Sick Leave, the Commission will presume that no such policy exists and that Covered Employees can use Earned Sick Leave pursuant to the Ordinance without providing any prior notification and without suffering any discipline as a result.

(E) Preference for Written Notification

Although Covered Employees can provide notification of use by any means of communication that is consistent with the reasonable written policy of his or her Covered Employer, the Commission encourages Covered Employees and Covered Employers to memorialize notification of use of Earned Sick Leave in writing. When faced with conflicting evidence regarding an issue of notification, the Commission will presume the accuracy of evidence that is written and dated when it conflicts with evidence that is testimonial in nature.

(F) FMLA Leave

Notwithstanding anything else in this Rule, when an FMLA-Eligible Covered Employee uses FMLA-Restricted Earned Sick Leave as described in Section 500.500(C) and pursuant to the federal Family and Medical Leave Act, the notification requirements of the federal Family and Medical Leave Act will take precedence over any conflicting requirements containing in a Covered Employer's reasonable written policy for notification of use of Earned Sick Leave pursuant to the Ordinance.

**Section 500.700**      **Documentation of Use**

A Covered Employer may require the following documentation to verify that Earned Sick Leave is being used for permissible purposes when a Covered Employee is absent for more than three consecutive work days:

- (1) For time used for the purposes described in Sections 500.500(A)(1)-(2) (*i.e.* the Covered Employee's own illness, injury, or medical care) or (A)(6)-(7) (*i.e.* a Covered Employee's Family Member's illness, injury, or medical care), a Covered Employer may require that a Covered Employee provide a note signed by a licensed health care provider; however, the Covered Employer shall not require that such note specify the nature of the Covered Employee's or his or her Family Member's injury, illness, or condition, except as required by law. Moreover, a Covered Employer who receives such documentation from a Covered Employee must maintain the confidentiality of the documentation to the extent that it contains sensitive or private medical information about any identifiable person.
- (2) For time used for the purposes described in Sections 500.500(A)(3)-(4) (*i.e.* the Covered Employee is a victim of domestic violence, sexual violence, or stalking) or (A)(8)-(9) (*i.e.* a Covered Employee's Family Member is a victim of domestic violence, sexual violence, or stalking), a Covered Employer may require that a Covered Employee provide a police report, court document, a signed statement from an attorney, a member of the clergy, or a victim



services advocate, or any other evidence that supports the Covered Employee's claim, including a sworn declaration or affidavit from him or her or any other person who has knowledge of the circumstances. The Covered Employee may choose which document to submit, and no more than one document shall be required if the Earned Sick Leave is related to the same incident of violence or the same perpetrator. A Covered Employer who receives such documentation from a Covered Employee must maintain the confidentiality of the documentation.

- (3) For time used for the purposes described in Section 500.500(C) (*i.e.* FMLA leave), a Covered Employer may require a Covered Employee to provide the type of documentation that is required for leave under the federal Family and Medical Leave Act.

The Covered Employer cannot delay the use of Earned Sick Leave or delay the payment of wages due during an absence pursuant to the Ordinance on the basis that the Covered Employer has not yet received the required documentation under this Section. The Commission, however, will not protect a Covered Employee from discipline, including termination, for failure to provide requested documentation pursuant to this Rule where the Covered Employer has given the Covered Employee a reasonable period of time to produce the requested documentation.

For the purpose of determining whether the Covered Employee has been provided a reasonable period of time to produce the requested documentation, the Commission will consider (i) what documentation has been requested, (ii) the amount of time the Covered Employee has been given to obtain the requested documentation, (iii) the Covered Employee's circumstances necessitating that he or she take Earned Sick Leave and (iv) in whose possession, custody or control the requested documents are.

Although a Covered Employer cannot require documentation from a Covered Employee to substantiate that Earned Sick Leave was used for a proper purpose for absences of three consecutive workdays or less, a Covered Employer is not prohibited from demonstrating that a Covered Employee has misused Earned Sick Leave by reference to any other evidence or documentation that it obtains from any other source that is not the Covered Employee. Moreover, the Commission encourages Covered Employees to document the appropriateness of Earned Sick Leave used. The Commission will presume the accuracy of evidence that is written and dated when it conflicts with evidence that is testimonial in nature.

#### **Section 500.800      Payment of Earned Sick Leave**

Wages earned during Earned Sick Leave must be paid no later than the next regular payroll period beginning after the Earned Sick Leave was used by the Covered Employee.

## **PART 600 ALTERNATIVE PRACTICES**

### **Section 600.100 Minimum Requirements**

Sections 400 and 500 provide minimum requirements for a Covered Employer with respect to the accrual, carryover and use of Earned Sick Leave. Nothing in these Rules should be construed as prohibiting a Covered Employer from allowing a Covered Employee:

- (1) to accrue Earned Sick Leave at a faster rate than that described in Section 400.200;
- (2) to accrue Earned Sick Leave without regard to the location of where the Covered Employee performed work for the Covered Employer;
- (3) a higher annual Accrual Cap than that described in Section 400.500;
- (4) to carry over more accrued Earned Sick Leave from one Accrual Period to the next than that described in Section 400.600;
- (5) to use more Earned Sick Leave each Accrual Period than that described in Section 500.300; or
- (6) to use Earned Sick Leave, Ordinance-Restricted Earned Sick Leave, and/or FMLA-Restricted Earned Sick Leave for purposes other than those described in Section 500.500.

A Covered Employer who exercises one or more of the foregoing options does not create a cause of action for a Covered Employee under the Ordinance if the Covered Employer later reverts to the minimum requirements of these Rules or some other practice that exceeds the minimum requirements of these Rules but is less generous. For example, if a Covered Employer had allowed Covered Employees to accrue one hour of Earned Sick Leave for every 10 hours of work, the Commission would not entertain the complaint of a Covered Employee if the Covered Employer, on a later occasion, requires a Covered Employee, for any nondiscriminatory reason, to instead work 30 hours before accruing an hour of Earned Sick Leave.

### **Section 600.200 Terminology**

The Commission will not require a Covered Employer to use the same terminology used in the Ordinance or these Rules to describe paid leave benefits provided to Covered Employees as a precondition of finding that such paid leave benefits meet the requirements of the Ordinance.

### **Section 600.300 Equivalent Practices**

The Commission recognizes that many Covered Employers have existing paid leave programs that they wish to modify as minimally as possible to achieve compliance with the Ordinance.

The Commission believes that the Ordinance provides Covered Employers with this flexibility so long as, in practical effect, Covered Employees (1) are awarded leave that, if it were converted into an hourly rate, accrues at a rate that is equivalent to or faster than that required by Section 400.200; (2) can carry over unused leave in an amount equivalent to or greater than that required by Section 400.600 from one Accrual Period to the next; (3) can use an amount of leave in each Accrual Period that is equivalent to or greater than that required by Section 500.300; (4) can use such leave for purposes that include at least those grounds set out in Section 500.500; and (5) can do so without providing notice or documentation that is more burdensome than that described in Sections 500.600 and 500.700.

The Commission observes that a number of additional alternative practices similarly may ease the administration of Earned Sick Leave while remaining its equivalent. Here, the Commission outlines some of the practices that it has determined would be compliant with the Ordinance. The following list is not intended to be exhaustive:

(A) Alternative to Accrual: Front-Loading

Section 400.200(G) of these Rules describes an equivalent practice for Covered Employers who prefer not to follow the accrual method described in Section 42-3(b)(2)-(4) of the Ordinance for awarding Earned Sick Leave to Covered Employees.

(B) Alternative to Carryover: Front-Loading

Section 400.600(C) of these Rules describes an equivalent practice for Covered Employers who prefer not to do individualized calculations of the amount of unused accrued Earned Sick Leave to be carried over from one Accrual Period to the next as described in Section 42-3(b)(5)-(6) of the Ordinance.

(C) Alternative to Accrual and Carryover: Front-Loading Both

For ease of administration, Covered Employers may choose to immediately grant at the beginning of each Accrual Period the maximum annual amount to which their Covered Employees could be entitled for both accrual during the current Accrual Period and carryover from the prior Accrual Period. Covered Employers may do so while complying with the Ordinance as follows: A Non-FMLA Eligible Covered Employer may comply by awarding its Covered Employees 60 hours of Earned Sick Leave (*i.e.* 40 hours maximum annual accrual plus 20 hours maximum annual carryover). An FMLA-Eligible Covered Employer may comply by awarding its Covered Employees 60 hours of Ordinance-Restricted Earned Sick Leave and 40 hours of FMLA-Restricted Earned Sick Leave. In both cases, the Covered Employer would then no longer be obligated either to track Covered Employee's accrual of Earned Sick Leave during the year or to allow carryover of unused accrued Earned Sick Leave from one Accrual Period to the next.

(D) Alternative to Specific-Purpose Leave: Multi-Purpose Paid Time Off

Where the federal Family and Medical Leave Act does not apply (*e.g.*, a Covered Employee of a Non-FMLA-Eligible Covered Employer or a Non-FMLA-Eligible Covered Employee of an FMLA-Eligible Covered Employer), the Ordinance does not require a Covered Employer to allow a Covered Employee to use more than 40 hours of Earned Sick Leave in a year. As a result, in such circumstances, the Commission will typically consider a Covered Employer to be in compliance with the Ordinance if the Covered Employer provides Covered Employees each Accrual Period with 5 days (*i.e.* 40 hours) of Paid Time Off (“PTO”), which can be used for the purposes described in Section 500.500 or for other leave purposes (*e.g.*, vacation), at the option of the Covered Employee.

Similarly, where the federal Family and Medical Leave Act does apply (*i.e.* an FMLA-Eligible Covered Employee of an FMLA-Eligible Covered Employer), the Ordinance does not require a Covered Employer to allow a Covered Employee to use more than 60 hours of Earned Sick Leave in a year. As a result, in such circumstances, the Commission will typically consider a Covered Employer to be in compliance with the Ordinance if the Covered Employer provides Covered Employees each Accrual Period with 7.5 days (*i.e.* 60 hours) of PTO, which can be used for the purposes described in Section 500.500 or for other leave purposes (*e.g.*, vacation), at the option of the Covered Employee.

To be equivalent, the Covered Employer could not, for example, require notice or documentation from the Covered Employee that is any more burdensome than the notice or documentation described in Sections 500.600 and 500.700, when a Covered Employee uses PTO as the equivalent of Earned Sick Leave.

(E) Alternative to Non-Uniform Accrual Periods: Excess Front-Loading or Excess Carryover

Under Section 42-3(b)(4) of the Ordinance, each Covered Employee has a specifically defined Accrual Period, the 12-month period starting on the Covered Employee’s Date of Initial Accrual, which ends 12 months later and repeats each year. For ease of administration, some Covered Employers may prefer to shift the start and end dates of any particular Covered Employee’s Accrual Period from the dates set by the Ordinance. One Covered Employer, for example, might prefer such a shift to align a particular Covered Employee’s Accrual Period with the Accrual Periods of other Covered Employees employed by the same Covered Employer (*e.g.*, have all employees share the same benefit year based on the calendar year or the employer’s fiscal year). Another Covered Employer might prefer such a shift to align a particular Covered Employee’s Accrual Period with the Covered Employer’s preexisting benefits administration practices (*e.g.*, an employer that bases other employee benefits on the anniversary of an employee’s start date may want to continue to do that for existing employees in Cook County whose Date of Initial Accrual would otherwise be July 1, 2017).

Regardless of the reason, shifting the start and end dates of a Covered Employee’s Accrual Period to fit a Covered Employer’s administrative preference or processes creates the risk that a Covered Employee may lose Earned Sick Leave to which he or she would otherwise be entitled to under the Ordinance. This is because while a Covered Employee accrues one hour of Earned Sick Leave for every 40 hours of work in Cook County, at the end of each Accrual Period, that

Covered Employee may lose some of his or her unused accrued Earned Sick Leave. As described in Section 400.600 of these Rules, the Ordinance does not require that a Covered Employer allow a Covered Employee to carry over all of his or her unused accrued Earned Sick Leave from one Accrual Period to the next. As a result, if a Covered Employer ends a Covered Employee's Accrual Period at a point where the Covered Employee has had less than 12 months since his or her Date of Initial Accrual, under the ordinary application of the carryover rules, the Covered Employee will be worse off. It is, however, possible for a Covered Employer to shift the start and end dates of a Covered Employee's Accrual Period in ways that do not make a Covered Employee worse off if the Covered Employer also extends Earned Sick Leave benefits to the Covered Employee that are in excess of those benefits required by the Ordinance.

The Commission will consider a Covered Employer who shifts the start and end dates of a Covered Employee's first Accrual Period to remain in compliance with the Ordinance so long as the Covered Employee is no worse off than he or she would be if the Covered Employer used the Accrual Period established in the Ordinance. The Commission has determined that there are at least two ways that a Covered Employer may be able to achieve this. First, in a Covered Employee's first days of employment, the Covered Employer can front-load a greater amount of Earned Sick Leave than the amount to which the Covered Employee is otherwise entitled to under the Ordinance. Second, at the end of a Covered Employee's first Accrual Period, a Covered Employer can allow the Covered Employee to carry over into the next Accrual Period all (rather than half) of his or her unused accrued Earned Sick Leave. The exact methodology – whether extra front-loading or extra carryover – is highly fact-specific and depends on, among other things, the dates that the Covered Employer is seeking to use for the Covered Employee's Accrual Period, the Covered Employee's Start of Employment, the Covered Employee's Date of Initial Accrual and the number of hours that the Covered Employee will work in Cook County.

## **PART 700 NOTIFICATION OF RIGHTS**

### **Section 700.100 Posting Required**

Every Covered Employer shall post in a conspicuous place at each place of business where any Covered Employee works within the geographic boundaries of Cook County a notice advising Covered Employees of their rights under the Ordinance. Such posting shall include, at a minimum, a description of the benefit, coverage, the rate of accrual, permissible uses and prohibited employer practices as well as contact information for the Commission and an explanation of how an employee who believes that his or her employer has violated the Ordinance can make a complaint.

For the purpose of this Rule, the Commission will not consider a residence where a Covered Employer employs only one or more domestic workers to be a place of business where posting of notice is required by the Ordinance. In addition, the Commission will not consider a place of business to be within the geographic boundaries of Cook County if it is also within the geographic boundaries of a municipality that has lawfully preempted the Ordinance.

The Commission will provide on its website a model posting that satisfies a Covered Employer's obligation under this Rule; however, a Covered Employer may satisfy its obligation under this Rule through any posting that advises Covered Employees of their rights under the Ordinance, including an explanation of how a Covered Employer's specific leave policy, which may use different terminology than the Ordinance, meets the requirements of the Ordinance.

### **Section 700.200 Notice of Rights Required**

Every Covered Employer shall also provide to every Covered Employee a notice of rights advising each Covered Employee of his or her rights under the Ordinance by the later of each Covered Employee's Date of Coverage or Date of Eligibility, and at least once per calendar year thereafter. Such notice may accompany a Covered Employee's paycheck or paycheck deposit notification. Such notice shall include, at a minimum, a description of the benefit, coverage, the rate of accrual, permissible uses and prohibited employer practices as well as contact information for the Commission and an explanation of how employees who believe that their employer has violated the Ordinance can make a complaint.

The Commission will provide on its website a model notice of rights that satisfies a Covered Employer's obligation under this Rule; however, a Covered Employer may satisfy its obligation under this Rule through any written notice that advises Covered Employees of their rights under the Ordinance, including an explanation of how a Covered Employer's specific leave policy, which may use different terminology than the Ordinance, meets the requirements of the Ordinance.

**PART 800 RECORDKEEPING**

**Section 800.100 Required Records; Covered Employer**

Covered Employers are not required to retain any records prior to being named as respondents to a claim filed under the Ordinance with the Commission. The Commission, however, anticipates that moderately sophisticated Covered Employers who are complying with the Ordinance will have personnel and payroll records that are sufficient to demonstrate over the course of the three most recent years:

- (1) each Covered Employee’s name;
- (2) each Covered Employee’s Contact Information, including mailing address, telephone number and/or email address;
- (3) each Covered Employee’s occupation or job title;
- (4) each Covered Employee’s hire date;
- (5) the number of hours that each Covered Employee worked each workweek or pay period;
- (6) the number of hours of Earned Sick Leave each Covered Employee was awarded;
- (7) the number of hours of Earned Sick Leave each Covered Employee used; and
- (8) the date upon which each Covered Employee used Earned Sick Leave.

Failure of a moderately sophisticated Covered Employer to be able to produce such records if requested by the Commission in response to a complaint alleging a violation of the Ordinance may result in an adverse presumption against the Covered Employer by which the Commission will presume the accuracy of a Covered Employee’s testimonial evidence with respect to the enumerated issue when it is in conflict with the testimonial evidence of a moderately sophisticated Covered Employer who cannot produce the expected records.

For the purpose of this Rule, the Commission will presume that any Covered Employer who does business in any corporate form or any natural person who employs more than four Covered Employees is moderately sophisticated.

**Section 800.200 Required Records; Covered Employee**

Covered Employees are not required to retain any records supporting their claim to a violation of the Ordinance in advance of filing such a claim with the Commission. The Commission, however, encourages Covered Employees to retain such records if they will use the Commission to enforce their rights under the Ordinance. The Commission will presume the accuracy of a

Covered Employer's contemporaneously written business records when they are in conflict with a Covered Employee's testimonial evidence.

**Section 800.300      Preservation Obligation**

Once a Covered Employer or Covered Employee has notice of a claim under the Ordinance, they have an obligation to retain all records related to the claim in their possession, custody or control until final disposition of the claim by the Commission. Destruction, damage or loss of such records will result in an adverse presumption against any party who had a retention obligation under this Rule. The Commission may also fine that party if the Commission determines that the destruction, damage or loss of such records was intentional.



## **PART 900 MISCELLANEOUS PRACTICES**

### **Section 900.100 Prohibited**

In addition to any other practice expressly or implicitly prohibited by the Ordinance, the Commission will consider a Covered Employer to have violated the Ordinance by:

- (1) requiring that a Covered Employee find coverage as a condition of using Earned Sick Leave;
- (2) retaliating against a Covered Employee for exercising rights under the Ordinance or participating as a party or witness in a case alleging a violation of the Ordinance that is or was pending before the Commission;
- (3) counting absences arising from the use of properly noticed Earned Sick Leave as an absence that triggers discipline, demotion, suspension or any other adverse employment action;
- (4) switching a Covered Employee's schedule after he or she provides notice that he or she is using or will use Earned Sick Leave to avoid paying the employee during his or her absence;
- (5) forbidding or requiring a Covered Employee to take Earned Sick Leave, provided that it is not prohibited for a Covered Employer to require that a Covered Employee use accrued Earned Sick Leave when the Covered Employee can do so instead of taking an unpaid absence from work; or
- (6) paying a Covered Employee to not take Earned Sick Leave.

### **Section 900.200 Permissible**

The Commission will not consider a Covered Employer to have violated the Ordinance by doing the following:

- (1) denying a Covered Employee's request to use Earned Sick Leave for a foreseeable purpose where the Covered Employee failed to provide reasonable notice consistent with Section 500.600(B);
- (2) imposing discipline on a Covered Employee for failing to provide his or her Covered Employer with notice that he or she will use Earned Sick Leave to be absent from work in accordance with a reasonable written policy established by the Covered Employer;

- (3) imposing discipline on a Covered Employee for abusing Earned Sick Leave by, for example, a proven use of Earned Sick Leave that is not one of the permissible uses described in Section 500.500;
- (4) if a Covered Employer fails to pay Earned Sick Leave on the grounds that the payment of Earned Sick Leave in the specific circumstances at issue would require the Covered Employer to compensate a Covered Employee at more than the appropriate rate of pay as described in Section 200.100(A). For example, if a Covered Employee is being compensated by a Covered Employer at 100 percent of his or her hourly rate of pay through workers' compensation payments or disability leave benefits, the Commission will not require that a Covered Employer compensate the Covered Employee at 200 percent of his or her normal rate of pay through an additional payment for the use of Earned Sick Leave.

**PART 1000 ENFORCEMENT**

**SUBPART 1010 SCOPE**

**Section 1010.100 Application of the Ordinance**

With respect to enforcement of the Ordinance, the Commission will defer to the jurisdiction of any municipality that is within the geographic boundaries of Cook County, including but not limited to the City of Chicago, that has enacted an earned sick leave law applicable to the Covered Employee at issue, which (a) provides Earned Sick Leave in an amount and manner that is as, or more, generous than the Ordinance and (b) provides remedies against a Covered Employer that fails to provide such benefits.

**SUBPART 1020 ADMINISTRATIVE PROCESS**

**Section 1020.100 Time Limit for Filing Complaints**

A Covered Employee who seeks to file a complaint with the Commission alleging that a Covered Employer has violated the Ordinance must do so within three years of the alleged violation, provided that, if there is evidence that the Covered Employer concealed the violation, then any complaint must be filed with the Commission within three years of when the Covered Employee discovered, or reasonably should have discovered, the violation. Where such a violation is continuing, the claim must be brought within three years of the last occurrence of the alleged violation.

Once a Covered Employee has filed a complaint within the time allowed by this Rule, the Commission's investigation of that complaint is not necessarily limited to the same time period though, as a matter of practice, the Commission will not focus its investigation on alleged violations of the Ordinance that are more than three years old.

That a claim may be too old to file at the Commission will not impact the Covered Employee's ability to bring the claim in a court of competent jurisdiction pursuant to Section 42-8(b) of the Ordinance.

**Section 1020.200 Initiating Enforcement at the Commission**

(A) Case Initiation

A Covered Employee who believes that his or her Covered Employer has committed any violation of the Ordinance may file a complaint with the Commission. Such a complaint must be in writing and verified by the complaining Covered Employee in addition to being timely pursuant to Section 1020.100.

Further, the complaint must include:

- (1) the name of the Covered Employee and his or her contact information;

- (2) the name of the Covered Employer that has allegedly violated the Ordinance and its contact information;
- (3) a statement of facts alleged to establish that the complaining employee and his or her employer are covered by the Ordinance, including, but not limited to, (i) the address of the Covered Employer's Place of Business located in Cook County and (ii) the date(s) and place(s) where the complainant performed a minimum of two hours of work for the Covered Employer while physically present within the geographic boundaries of Cook County and a brief description of that work; and
- (4) a statement of the facts alleged to constitute the violation of the Ordinance, including, but not limited to, (i) the date(s) and amount(s) of any alleged denial of use or under-accrual of Earned Sick Leave for work performed for the Covered Employer while in Cook County; (ii) the date(s) and place(s) of any alleged failure to notify; and (iii) the date(s), place(s) and witness(es) to any alleged retaliation.

The Commission will provide a form that a Covered Employee can use for this purpose on its website. A complaining Covered Employee can be represented by counsel at this or any stage of the Commission process but is not required to retain an attorney for this purpose.

(B) Review of Complaint

Once filed, the Commission will serve the complaint unless it finds upon review that (i) the complaint is not timely; (ii) the Commission lacks jurisdiction over the complaint; or (iii) the complaint does not state facts that, if true, would constitute a violation of the Ordinance. The Commission then will issue an abeyance letter to the complaining employee and take no further action with respect to the employee's claim.

The Commission may also decline to serve a complaint from an employee who has previously filed multiple complaints with the Commission that subsequently were determined to be non-meritorious if (i) the Commission previously determined that the employee had filed the non-meritorious complaint for an improper purpose or (ii) the Commission has some articulable evidence that the current complaint is also being filed for an improper purpose. The Commission will explain this determination in an abeyance letter issued to the complaining employee.

In any instance, the Commission's decision to decline an employee's request to initiate a case for enforcement of the Ordinance does not in any way prejudice any right that employee may have to pursue enforcement of the Ordinance outside of the Commission in a court of competent jurisdiction pursuant to Section 42-8(b) of the Ordinance.

If the complaint is deemed viable by the Commission, the Commission will either serve the complaint on the Covered Employer named in the complaint or will serve, as a substitute, a Commission Complaint as described in Section 1020.200(C).

(C) Commission Complaint

In its discretion, in lieu of serving a complaint as filed, the Commission may serve instead on the Covered Employer named in the complaint, a complaint that is written in the Commission's name. Such a complaint does not have to disclose the name of the complaining Covered Employee and may allege violations of the Ordinance that are broader than those involving the complaining Covered Employee.

The Commission will consider the totality of the circumstances but at least two circumstances will favor this approach: (i) multiple Covered Employees of the same Covered Employer have filed, or attempted to file, complaints with the Commission alleging substantially similar violations of the Ordinance by the Covered Employer or (ii) there is a reasonable probability based on the nature of the allegations and any evidence provided by the complaining Covered Employee that the Covered Employer has also violated the Ordinance with respect to other Covered Employees who have not yet filed a complaint with the Commission but could conceivably do so.

**Section 1020.300**      **Commission Investigations of Alleged Ordinance Violations**

(A) Response

Once served with a complaint, whether in the name of a complaining Covered Employee or in the name of the Commission, the Covered Employer has 30 days to file with the Commission a written and verified answer to the complaint that admits or denies each allegation and sets out any additional facts that, if true, would establish that the Covered Employer has complied with the Ordinance, the Ordinance does not apply, the Commission lacks jurisdiction over the claim, or any other reason in support of dismissal of the complaint.

The Covered Employer can request an extension of time to respond to a complaint but must do so in writing before the expiration of the time to answer. Absent extraordinary circumstances, the Commission will only grant one extension. The failure to promptly retain counsel is not an extraordinary circumstance.

Where the Commission deems the Covered Employer's response to be sufficient to demonstrate that the complaint lacks merit, the Commission will dismiss the complaint. The Commission's decision to dismiss at this stage does not in any way prejudice any right that a Covered Employee may have to pursue enforcement of the Ordinance outside of the Commission in a court of competent jurisdiction pursuant to Section 42-8(b) of the Ordinance.

Where the Commission deems the Covered Employer's response to be insufficient to demonstrate that the complaint lacks merit, the Commission will proceed with discovery.

Failure to submit a response within the time allotted will constitute an admission by the Covered Employer to the Commission of each allegation in the complaint. The Commission will render an order pursuant to Section 1020.400 on the basis of such admissions as appropriate.

(B) Discovery

The Commission will direct all discovery related to its determination of whether a violation of the Ordinance has occurred. The complaining Covered Employee and the Covered Employer can suggest discovery to the Commission that would facilitate the determination of whether or not a violation of the Ordinance has occurred, but the Commission will make the final determination of what information and testimony to obtain with the goal of conducting an accurate and expeditious investigation at the lowest reasonable cost to all parties and witnesses.

In conducting discovery of the parties, the Commission may conduct interviews or submit document requests and questionnaires calling for written responses. In conducting discovery of non-parties or as otherwise necessary, the Commission may issue a subpoena pursuant to Section 1020.300(B)(4).

To the extent that the Commission is confronted with conflicting testimonial evidence on an issue that is material to its determination of whether a violation of the Ordinance has occurred, the Commission may order an Evidentiary Conference pursuant to Section 1020.300(B)(3).

(1) Failure to Produce Requested Evidence

All discovery requested by the Commission must be provided within the time provided to respond in the Commission's request. The Commission will presume that any evidence it requests but that has not been produced or that has not been produced within the time requested does not exist, and it will resolve the related question of fact or law on the basis of the absence of evidence and/or the presence of other evidence obtained from other sources. Further, if a party fails to produce information requested by the Commission within the time requested, the party will be barred from presenting that evidence in any later setting related to enforcement of the Ordinance.

(2) Sensitive Information

Parties who may be producing confidential, proprietary or personal information to the Commission should identify that material as such and may request appropriate protections for that information (*e.g.*, request that any documents that are not included or referenced in the Commission's final order be returned to the producing party at the close of the investigation).

(3) Evidentiary Conference

The Commission may order an Evidentiary Conference to resolve simple factual disputes arising from conflicting testimonial evidence by parties and/or witnesses that is potentially determinative as to whether there is evidence of a violation of the Ordinance. The Commission may order the parties and/or witnesses to provide in-person, sworn testimony on the disputed fact before an administrative law judge who will make a determination as to the credibility of any testifying party or witness with respect to the disputed fact. An order of an Evidentiary Conference will provide the parties with notice of the disputed issue of fact and the identity of the testifying parties and/or witnesses. Additional witnesses may be added by the parties as provided in subsection (a).

- (a) At an Evidentiary Conference, the testifying parties and/or witnesses will be examined by the administrative law judge. The parties to the case, or their attorneys or representatives of record, will then have the opportunity to examine and cross-examine any party or witness testifying at an Evidentiary Conference. The parties to the case, or their attorneys or representatives of record, may also present any additional witnesses or documentary evidence to the administrative law judge that the parties believe will assist the administrative law judge in resolving the disputed issue of fact. A party must provide advance notice of any such additional evidence to the Commission and the other party at least five business days before the Evidentiary Conference. The Evidentiary Conference is limited to hearing evidence relevant to resolving the dispute of fact identified in the order of an Evidentiary Conference.
- (b) Within 21 days of the Evidentiary Conference, the administrative law judge will present in writing any findings of fact, including any determinations of testimonial credibility, to the Commission. The administrative law judge's findings shall be considered an additional piece of evidence in the Commission's investigation into the merits of the complaint.

(4) Subpoenas

The Commission may issue a subpoena on its own initiative at any time for the appearance of witnesses or the production of evidence. If a person does not comply with a subpoena on the date set for compliance whether because of refusal, neglect, or a change in the compliance date (such as due to continuation of an Administrative Hearing) or for any other reason, the subpoena shall continue in effect for up to one year, and a new subpoena need not be issued.

When issuing a subpoena the Commission shall pay witness fees of \$20.00 per day and mileage fees of \$0.20 per mile to the person subpoenaed.

The person to whom the subpoena is directed may object to the subpoena in whole or in part. The objection may be made to the Commission or to the administrative law judge (if one has been assigned) no later than five business days prior to the time for appearance or production required by the subpoena. The objection shall be in writing, filed with the Commission, served on all parties and on the administrative law judge (if any assigned), and shall specify the grounds for objection. The party opposing the objection may file a written response to the objection specifying the need for certain witnesses or documentation no later than two business days prior

to the time for appearance or production required by the subpoena. The Commission or, if assigned, the administrative law judge, shall consider the objection and render a decision on the objection.

Failure to comply with a subpoena issued by the Commission shall constitute a separate violation of the Ordinance. Every day that a person fails to comply with said subpoena shall constitute a separate and distinct violation. The Commission may seek judicial enforcement of its subpoenas.

#### **Section 1020.400      Commission Findings**

##### **(A)      Finding of No Violation**

If the Commission finds that the parties' pleadings and the evidence that the Commission obtained through discovery is insufficient to establish that the Covered Employer violated the Ordinance, the Commission will render a Finding of No Violation and serve it on the parties. A Finding of No Violation is on the merits and may prejudice any right that the complaining Covered Employee may have to pursue enforcement of the Ordinance outside of the Commission in a court of competent jurisdiction pursuant to Section 42-8(b) of the Ordinance. A Finding of No Violation is a final order of the Commission, subject to administrative review as described in Section 1020.600.

##### **(B)      Finding of Violation**

If the Commission finds on the basis of its investigation that a violation has occurred, the Commission will render a Finding of Violation. The Finding of Violation will order remedies and/or sanctions as described in Subpart 1030.

The Covered Employer has 30 days from the date that the Commission renders its Finding of Violation to accept the Commission's finding or contest it pursuant to the procedures set out in Section 1020.500.

If the Covered Employer accepts the Finding of Violation, the Covered Employer must demonstrate compliance with any remedies ordered within 30 days or such other time as may be provided by the Commission.

#### **Section 1020.500      Administrative Hearing**

If the Covered Employer does not accept the Commission's Finding of Violation pursuant to Section 1020.400(B), the Commission will appoint an administrative law judge to make a final determination as to whether the Covered Employer violated the Ordinance and the remedies and sanctions ordered by the Commission are appropriate. The Commission, or its designee, will present the evidence it obtained that supports its Finding of Violation. The Covered Employer can cross-examine this evidence and/or produce additional relevant evidence (that it is not otherwise prohibited by Section 1020.300(B)(2) from producing). Neither the Commission nor the Covered Employer will be entitled to any additional discovery at this stage though the Commission can use its subpoena power as described in Section 1020.300(B)(4) to arrange for the presence of any necessary witnesses whose live testimony is requested by the administrative



law judge or the Covered Employer. In the case of a witness subpoenaed at the request of the Covered Employer, the Covered Employer must effect service of the subpoena and pay the associated witness and mileage fees.

The administrative law judge will promptly issue a written opinion affirming or setting aside all or any portion of the Finding of Violation, including any proposed remedies and/or sanctions. The administrative law judge's decision will be the final decision of the Commission and be subject to administrative review as described in Section 1020.600.

**Section 1020.600     Administrative Review**

The Commission will not entertain motions for reconsideration of Findings of Violation or Findings of No Violation. A party contesting the Commission's Finding of Violation or Finding of No Violation may, however, seek administrative review of the Commission's decision by filing a petition for *writ of certiorari* in the Circuit Court of Cook County within 30 days of a Finding of No Violation as described in Section 1020.400(A) or within 30 days of a Finding of Violation as described in Section 1020.500.

**Section 1020.700     Service**

For the purpose of any of these Rules that require service:

(A)     On Complainant

A complaining Covered Employee shall be served by mail or in person at the address he or she provides on the complaint, provided that, if a complaining Covered Employee subsequently provides any other address, including the address of counsel, in writing to all parties and the Commission, then all future service upon the complaining Covered Employee shall be at that address.

(B)     On Respondent

A Covered Employer shall be served by mail or in person at its principal place of business or at its place of business where all or some of the alleged Ordinance violations occurred, provided that, if a Covered Employer subsequently provides any other address, including the address of counsel, in writing to all parties and the Commission, then all future service upon the Covered Employer shall be at that address.

(C)     On the Commission

The Commission shall be served at its 69 West Washington office by mail or in person Monday through Friday, excluding County holidays, between 9:00 a.m. and 4:00 p.m.

(D)     Electronic Service

Service by electronic means to an email address provided by a party or the Commission can be made in lieu of mail or in-person delivery after the initial pleadings to any party or the Commission with the prior written consent of that party or the Commission, as applicable.

(E) When Service is Effective

Electronic service is presumed to be effective on the date on which it is sent. In-person service is presumed to be effective on the date on which it is made. Service by U.S. mail is presumed to be effective three business days after it is deposited in the mail with postage prepaid.

**Section 1020.800** Evidence of Compliance

For the first year after the effective date of the Ordinance, if a Covered Employer that is the respondent in a complaint for violation of this Ordinance provides the Commission with competent evidence that it is in, or has come back into, full compliance with the Ordinance, then the Commission will terminate any investigation pursuant to Section 1020.300(A), will not proceed to rendering an order pursuant to Section 1020.400, and will dismiss the complaint with prejudice. The Commission considers full compliance to include the payment of any lost wages to affected Covered Employees that resulted from noncompliance with the Ordinance.

The Commission will revisit this rule on or before July 1, 2018 to determine whether it has furthered the Commission's goal of encouraging Covered Employers who may be out of compliance with the Ordinance to come quickly into compliance. If so, this Rule may be extended.

**SUBPART 1030** ADMINISTRATIVE REMEDIES

When the Commission determines that a Covered Employer has violated the Ordinance, the Commission may (1) fine the Covered Employer; (2) order the Covered Employer to pay lost wages to affected Covered Employees; and/or (3) order other appropriate injunctive relief.

**Section 1030.100** Fines

The Commission will impose fines payable to Cook County for any violation of the Ordinance. The amount of such fine will not exceed \$500 per violation per Covered Employee affected per day. In exercising its discretion to set an appropriate fine, the Commission will take into account the extent of the violation, the culpability of the Covered Employer, and whether the Covered Employer promptly and thoroughly cooperated during the course of the Commission's investigation into the complaint that led to the Finding of Violation.

**Section 1030.200** Lost Wages

The Commission may order a Covered Employer that has violated the Ordinance to pay to affected Covered Employees the amount of any lost wages that resulted from noncompliance with the Ordinance. For example, if a Covered Employer violated the Ordinance by requiring a Covered Employee to take an unpaid sick day when the employee had accrued and could have used one day of Earned Sick Leave, the Commission may require the Covered Employer to pay the Covered Employee an amount equivalent to one day's wages. In exercising its discretion, the Commission will take into account whether the Covered Employer is currently meeting its obligations under the Ordinance and the amount and duration of any lost wages to affected Covered Employees.

If the Commission exercises the option pursuant to Section 1020.200(C) to proceed on behalf of the complaining Covered Employee, lost wages will be based on all Covered Employees employed by the Covered Employer during the relevant time period. The Commission will award the complaining Covered Employee his or her lost wages. The Commission will collect any back wages due to non-complaining Covered Employees to create a fund, administered by the Commission or its designee, to award lost wages to non-complaining Covered Employees employed by the Covered Employer.

If the Commission does not proceed on behalf of the complaining Covered Employee, the amount of lost wages awarded will be based only on lost wages due to the complaining Covered Employee. Back wages due to non-complaining Covered Employees will not be considered.

**Section 1030.300      Injunctive Relief**

The Commission may impose appropriate post-judgment injunctive relief. Such relief may include, for example, an order to cease and desist violating the Ordinance going forward or to reinstate a Covered Employee who was discharged in retaliation for exercising rights protected by the Ordinance.

The Commission may require the Covered Employer to submit to monitoring of future compliance with the Ordinance by the Commission or its designee. Monitoring may include additional recordkeeping obligations.

**SUBPART 1040      JUDICIAL ENFORCEMENT**

**Section 1040.100      Private Right of Action**

To the extent that a Covered Employee wishes to pursue a claim against a Covered Employer in Cook County in a court of competent jurisdiction pursuant to Section 42-8(b) of the Ordinance, the Commission will not require that the Covered Employee first bring such a claim to the Commission. A Covered Employee requires no authorization from the Commission to pursue such a claim in a court of competent jurisdiction and the Commission will not purport to grant such authorization.

**Section 1040.200      Effect on Administrative Enforcement**

If a Covered Employee first brings a claim alleging an Ordinance violation to the Commission and, while it is pending, files a substantially similar claim pursuant to Section 42-8(b) of the Ordinance in a court of competent jurisdiction, the Commission will dismiss its pending matter so as to avoid the risk of rendering inconsistent determinations. Similarly, the Commission will not entertain a claim to vindicate a right under the Ordinance that is substantially similar to a claim that was previously filed in a court of competent jurisdiction.